

UNITED STATES
v.
BERT L. JOHNSON

IBLA 73-206

Decided January 21, 1976

Appeal from a decision by Administrative Law Judge Rudolph M. Steiner declaring five lode mining claims null and void in mining claim contest R-3619.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Contests

The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

2. Mining Claims: Generally--Mining Claims: Contests--Res Judicata

A judgment is not conclusive of a fact erroneously assumed when the fact was not actually litigated and determination thereof was not essential to the decision.

3. Administrative Authority: Estoppel--Estoppel--Mining Claims: Contests--Mining Claims: Determination of Validity--Rules of Practice: Government Contests

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim,

were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

4. Administrative Authority: Estoppel--Estoppel--Federal Employees and Officers: Authority to Bind Government--Mining Claims: Contests--Mining Claims: Determination of Validity--Rules of Practice: Government Contests

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

5. Mining Claims: Contests--Mining Claims: Determination of Validity--Rules of Practice: Government Contests--Waiver

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

6. Mining Claims: Discovery: Generally

A lode mining claim is properly declared null and void in the absence of a showing of a discovery, on the particular claim, of a lode or vein bearing mineral which

would warrant a prudent man in further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

APPEARANCES: Milton Wichner, Esq., Los Angeles, California, for appellant; Robert D. Conover, Esq., Office of the Field Solicitor, Department of the Interior, Riverside, California, for the Government.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Bert L. Johnson ^{1/} has appealed from a decision by Administrative Law Judge Rudolph M. Steiner dated November 6, 1972, declaring five lode mining claims owned by Johnson null and void because each claim lacked a discovery of a valuable mineral deposit.

The five lode claims involved herein, Crown Hill, Crown Hill No. 1, Black Horse Claim, Constance No. 1, and Constance No. 2, are situated on unsurveyed lands in San Bernardino County, California. The above five claims, together with the Sunset lode claim, comprise Navy designated Parcel M-17 ^{2/} in the Navy's Mojave "B" Aerial Gunnery Range. The Government has held a lease on Parcel M-17 since the 1940's, with the present lease term having begun July 1, 1970. Appellant is the sole owner of all six of the claims, having taken title by quitclaim deed from H. R. Johnson and John B. Johnson in 1970.

On March 3, 1971, the Department of the Interior, on behalf of the Naval Facilities Engineering Command, Department of the Navy, issued a complaint charging that valuable minerals had not been shown to exist within the limits of the above five claims in sufficient quantities to constitute a valid discovery. A hearing was held on April 18, 1972, and June 20, 1972, in Los Angeles, California. Appellant moved to dismiss at the hearing and again in the present appeal on the following grounds:

- 1) That the Department of the Interior has no jurisdiction to entertain the contest during the

^{1/} Reference to appellant is intended hereinafter to include his predecessors in interest.

^{2/} The record herein as to Parcel M-17 is somewhat unclear. In a condemnation of a leasehold interest in M-17, United States v. Certain Parcels of Land, No. 3129-PH Civil (S.D. Cal., entered July 24, 1958), the judgment refers, at 6, to the "Johnson mill site." There is no reference in the judgment to any value being fixed for the five lode claims now contested.

pendency of United States v. 6,305.70 Acres of Land, Civil Action No. 65-1008-PH and United States v. 6,393.72 Acres of Land, Civil Action No. 70-1379-JWC.

2) That the validity of the mining claims has been adjudicated in three condemnation cases instituted by the United States Navy. 3/ The Government obtained possession of the mining claims in September 1943 by Order of Immediate Possession in an action in eminent domain instituted for the purpose of obtaining the land for use as an aerial gunnery and ordnance test range. The Government has been in exclusive possession of the claims since such time and appellant has been totally excluded therefrom. Appellant was awarded compensation for rentals of his interest. Therefore, the issue of validity is res judicata.

3) That the Government is collaterally estopped from asserting the claims to be invalid.

4) That the Department of the Navy and the Bureau of Land Management have by examination and investigation determined that each of the mining claims has been validated by a discovery and have paid appellant's predecessors in interest a rental in reliance thereon.

5) That the Government is equitably estopped and has waived its right to contest the claims.

6) That the Government seeks to deprive appellant of his property without due process of law.

Appellant's motion to dismiss was denied by the Administrative Law Judge. 4/

[1] Most of appellant's arguments were discussed in United States v. Martin, 9 IBLA 236 (1973). They are based on a misunderstanding of the function of the Department of the Interior in the

3/ United States v. Certain Parcels of Land, *supra* n. 2; United States v. 324,271.94 Acres of Land, No. 769-60-Y Civil (S.D. Cal., filed October 7, 1960); United States v. 6,305.70 Acres of Land, No. 65-1008-PH Civil (S.D. Cal., dated February 26, 1968).

4/ It would have been most helpful had the Administrative Law Judge incorporated into his decision the reasons for his ruling. See United States v. Casey, 22 IBLA 358, 362-66 (1975); 5 U.S.C. § 557 (1970); 43 CFR 4.475.

administration of the national resource lands. The Department has the right to determine the validity of an unpatented mining claim at any time until patent issues, and the Secretary of the Interior has jurisdiction over contest actions. As stated by the Supreme Court in Cameron v. United States, 252 U.S. 450, 459-60 (1920):

By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. (Citations omitted.)

A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights, and so do homestead and desert claims. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated; otherwise they work an unlawful private appropriation in derogation of the rights of the public.

Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void.

In Best v. Humboldt Placer Mining Co., 371 U.S. 334, 338-40 (1963), the Supreme Court held:

If a patent has not issued, controversies over the claims "should be solved by appeal to the land department and not to the courts."

* * * * *

We conclude that the institution of the suit in the District Court was an appropriate way of obtaining immediate possession, that it was not inconsistent with

the administrative remedy for determining the validity of the mining claims, and that the District Court acted properly in holding its hand until the issue of the validity of the claims has been resolved by the agency entrusted by Congress with the task. (Emphasis added.)

[2] The previous condemnation proceedings, first initiated during wartime emergency, dealt only with temporary leasehold interests to the land in the contested claims and also other land. They were not intended to determine the validity or invalidity of the specific claims. The issue in those proceedings was just compensation for condemnation, for a term of years, of appellant's claim of a valid possessory right to a group of unpatented claims.

An action is res judicata only if the same parties and same cause of action are involved. The Department of the Interior had no control over those suits nor was the Secretary named as a party. The condemnation awards made in the three court cases cited by appellant did not require a finding of a discovery on the lode claims here in issue, nor was such a finding made. Rather, the awards in the eminent domain proceedings included an unspecified amount for land in an additional claim--the Sunset claim--which is not a subject of this contest. 5/ As stated by Government counsel at the hearing, "the only evidence that has been taken is in connection with that one claim; not with the five claims that are involved in this proceeding." (Tr. 11.) From the record herein, there is no way to determine what value, if any, was ascribed to the aliquot parts of land condemned. There was no litigation of the issue of the ownership, validity or value of either the five lode claims here concerned or of any individual claims.

The claims have not been patented by the Department of the Interior. That part of the judgment in No. 3129-PH Civil, at 1-2--that the United States has accepted appellant's predecessors' representation to be the "owners" of parcel M-17--shows that the Court and parties assumed an erroneous fact. The same erroneous assumption, again nonessential and nonlitigated, was made in the judgments in No. 769-60-Y Civil, at 3, and in Civil No. 70-1379-LTL. A judgment is not conclusive as to a fact erroneously assumed where the fact was not actually litigated and the determination thereof was not essential to the decision made. Mannerfrid v. Brownell, 145 F. Supp. 55 (S.D. N.Y. 1956), aff'd 238 F.2d 32 (D.C. Cir. 1956), cert. denied, 352 U.S. 1017 (1957).

5/ As of April 18, 1972, the Sunset claim was not to be contested (Tr. 5, 10-11). Contest proceedings have, however, recently been initiated against Sunset.

In United States v. Fleming, 20 IBLA 83 (1975), appellants asserted the defense of res judicata. The Board held that the doctrine of res judicata will not bar a contest of an unpatented mining claim despite a previous condemnation action for a temporary exclusive easement when the judgment was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims or any prior adjudication of that issue in the Department of the Interior.

The Fleming contest was brought in accordance with a court order in United States v. Certain Mining Claim Tracts, Civ. No. 8571 (D. N.M. filed July 6, 1972), suspending action on a new compensation award pending administrative determination of validity of the claims. See Fleming at 87. It is doubtful that the Court would have put the parties to the expense of a hearing, if it had believed the defense of res judicata to be dispositive.

[3] Collateral estoppel similarly operates to prevent relitigation of issues actually litigated between the same parties in a suit on a different cause of action. V & S Ice Machine Co. v. Eastex Poultry Co., 437 F.2d 422, 425 (6th Cir. 1970); Harrison v. Bloomfield Bldg. Industries, Inc., 435 F.2d 1192, 1195 (5th Cir. 1971); United States v. Burch, 294 F.2d 1, 5 (5th Cir. 1961). If the second suit between the same parties is on a different cause of action, only those matters actually litigated and determined in the first action are conclusive in the second suit under the doctrine of collateral estoppel. United States v. General Electric Co., 358 F. Supp. 731, 738 (S.D. N.Y. 1973); United States v. Fleming, supra.

[4] Defenses of equitable estoppel were also asserted by appellants in Fleming, supra, and rejected by the Board. In Fleming, the Board stated at 97:

* * * The elements of equitable estoppel require in this instance that some agent of the Government who was authorized to declare the claims valid should have falsely misrepresented to or concealed material facts from the appellants concerning the validity of these claims with the intention that the appellants should act upon it, with the result that appellants were thereby induced to do so to their ultimate damage. See Utah v. United States, 284 U.S. 534, 545 (1932); Cramer v. United States, 261 U.S. 219, 234 (1923); Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960); * * * cf. United States v. Georgia-Pacific Co., 421 F.2d 92, 95-97 (9th Cir. 1970); United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir. 1973).

It has not been shown that any authorized officer of the Department of the Interior ever informed appellant that the Department had made a final determination that the claims were valid. Even assuming that this had occurred, or that appellant believed it had occurred, it is not alleged that this would have been done to induce appellant to take the position that he has taken, or that he could and would have acted otherwise had he known that the claims remained subject to contest. Finally, he has not shown that if the Department misrepresented or concealed the facts, and if, knowing the true facts, he would have acted otherwise, this resulted in appellant being damaged, or what such damage might be. Appellant has received appropriate compensation for the use of the land as though the claims were valid. Appellant could have applied for a patent. Nothing that the Government has done, or is alleged to have done, prevented appellant from following this course. Indeed, if he believed that the Department had made a final determination the claims were valid, as he says, this would have been the indicated action. Equitable estoppel does not apply in this case.

[5] As to waiver, the Government did not waive its right to contest the validity of the claims by its initiation of condemnation suits in federal court, for such is a proper procedure. Best v. Humboldt Placer Mining Co., *supra*. The doctrine of waiver requires both knowledge of an existing right and the intention to relinquish it. Himmelfarb v. United States, 175 F.2d 924 (9th Cir. 1949), *cert. denied*, 338 U.S. 860 (1949). There is no showing that any federal official intended to waive the right of the Secretary of the Interior to contest a claim believed to be invalid, or that any such official had authority to effect such a waiver of the Secretary's authority.

[6] It is noted that appellant did not argue the fact of a discovery on appeal, but relied on the arguments set forth above. While the actions of the Government in these condemnation cases may be properly considered as part of the evidence herein regarding the status of the claims at the times of the actions, such evidence is outweighed by that adduced at the hearing. This evidence, the applicable law and conclusions of fact and law were all properly set forth by Administrative Law Judge Steiner in the decision below. We agree with his determinations and decision, as augmented herein. A lode mining claim is properly declared null and void in the absence of a showing of a discovery, on the particular claim, of a lode or vein bearing mineral which would warrant

a prudent man in further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine. 6/ United States v. Martin, supra.

Appellant's other arguments have been reviewed and are found not to warrant reversal of the decision below. Appellant has been accorded due process in the hearing and other proceedings herein.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

6/ The lands have not been open to new mineral location since the date of the first condemnation. On October 29, 1963, the lands were withdrawn from all forms of appropriation including mining and mineral leasing. The price of gold was then \$35 per ounce.

